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9 **BEFORE THE**
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. CC 2010-255

12 **SOON HYUNG KWON**
13 **731 North Euclid**
14 **Anaheim, CA 92801**

A C C U S A T I O N

15 **Optometrist License No. OPT 11681**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this Accusation solely in her official capacity as
20 the Executive Officer of the State Board of Optometry, Department of Consumer Affairs.

21 2. On or about August 1, 2001, the State Board of Optometry issued Optometrist
22 License Number OPT 11681 to Soon Hyung Kwon (Respondent). The Optometrist License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 February 28, 2015, unless renewed.

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JURISDICTION

3. This Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 3090 of the code provides:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, including those who hold a retired license, a license with a retired volunteer designation, or an inactive license issued pursuant to Article 9 (commencing with Section 700) of Chapter 1, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

6. Section 810 of the Code provides:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

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7. Section 3105 of the Code provides:

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

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1 8. Section 3106 of the Code provides:

2 Knowingly making or signing any certificate or other document directly or
3 indirectly related to the practice of optometry that falsely represents the existence or
nonexistence of a state of facts constitutes unprofessional conduct.

4 9. Section 3110 of the Code states:

5 The board may take action against any licensee who is charged with
6 unprofessional conduct, and may deny an application for a license if the applicant has
committed unprofessional conduct. In addition to other provisions of this article,
unprofessional conduct includes, but is not limited to, the following:

7 ...

8 (e) The commission of fraud, misrepresentation, or any act involving
9 dishonesty or corruption, that is substantially related to the qualifications, functions,
or duties of an optometrist.

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11 **COST RECOVERY**

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13 10. Section 125.3. of the Code provides:

14 (a) Except as otherwise provided by law, in any order issued in resolution of a
15 disciplinary proceeding before any board within the department or before the
Osteopathic Medical Board, upon request of the entity bringing the proceeding may
16 request the administrative law judge to direct a licensee found to have committed a
violation or violations of the licensing act to pay a sum not to exceed the reasonable
costs of the investigation and enforcement of the case.

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18 **FIRST CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct - Insurance Fraud)

20 11. Respondent is subject to disciplinary action for unprofessional conduct under section
21 810(a)(1) and (a)(2) in that he knowingly presented false or fraudulent claims for the payment of
22 a loss under a contract of insurance and knowingly prepared false writings to be used in support
23 of such false or fraudulent claims. The circumstances are as follows:

24 12. On August 12, 2009, the insurance company, Vision Service Plan (VSP), conducted
25 an audit that revealed Respondent submitted \$62,575.00 in claims that Respondent could not
26 substantiate, with one or more of the following discrepancies found in many of the 63 records that
27 VSP reviewed:

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- a. Respondent made claims against unused benefits from patients' family members to cover the cost of materials and overages for the patients themselves;
- b. Respondent's documentation failed to support billing of VSP for contact lens fitting/follow-up;
- c. Respondent's documentation did not support the type of contact lens for which he billed;
- d. Respondent billed for medically necessary contact lenses when the patient record indicates that the patient received glasses and not contact lenses or any contact lens related services;
- e. Respondent billed for medically necessary contact lenses when the patient record did not support the medical need for contact lenses;
- f. Respondent billed for examinations and glasses under the Computer Vision Care (CVC) plan, which did not meet plan requirements;
- g. Respondent billed VSP for supplemental computer vision care examinations when his documentation did not support this supplemental billing;
- h. Respondent billed VSP for services or materials when the patients' records do not indicate that the Respondent even saw the patient on the date for which VSP was billed; and
- i. Respondent billed VSP for removal of a foreign body from a patient's eye when the patient's medical record states the patient was referred to his primary care physician for removal of the foreign body.

SECOND CAUSE FOR DISCIPLINE

(Altering, Modifying or Creating Medical Record With Fraudulent Intent)

13. Respondent is subject to disciplinary action for unprofessional conduct under section 3105 in that he altered, modified or created patient medical records, with fraudulent intent under a contract of insurance and knowingly prepared writings to be used in support of such false or fraudulent claims. The circumstances are set forth above, in paragraphs 11 through 12, which are hereby included by reference.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct – False Documents Related to Optometry)

3 14. Respondent is subject to disciplinary action for unprofessional conduct under section
4 3106 in that he knowingly made or signed a certificate or other document directly or indirectly
5 related to the practice of optometry that falsely represents the existence or non-existence of a state
6 of facts. The circumstances are set forth above, in paragraphs 11 through 12, which are hereby
7 incorporated by reference.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 (Unprofessional Conduct – Fraud, Misrepresentation, Dishonesty or Corruption)


10 15. Respondent is subject to disciplinary action for unprofessional conduct under section
11 3110(e) in that he committed fraud, misrepresentation, or acts involving dishonesty or corruption
12 that are substantially related to the qualifications, functions, or duties of an optometrist. The
13 circumstances are set forth above in paragraphs 11 through 12, which are hereby incorporated by
14 reference.

15 **PRAYER**

16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the State Board of Optometry issue a decision:

- 18 1. Revoking or suspending Optometrist License Number OPT 11681, issued to Soon
19 Hyung Kwon;
- 20 2. Ordering Soon Hyung Kwon to pay the State Board of Optometry the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: June 12, 2013

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26 MONA MAGGIO
27 Executive Officer
28 State Board of Optometry
Department of Consumer Affairs
State of California
Complainant